

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

VHS ACQUISITION SUBSIDIARY
NUMBER 7, INC. d/b/a SAINT
VINCENT HOSPITAL

Appellee/Cross-Appellant

v.

NATIONAL LABOR RELATIONS
BOARD, A FEDERAL
ADMINISTRATIVE AGENCY, *et al.*

Appellants/Cross-Appellees

Case Nos. 25-5006, 25-5021

MOTION TO HOLD CASE IN ABEYANCE

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia:

Appellants/Cross-Appellees National Labor Relations Board, a federal agency,
et al. (the NLRB), by its counsel, respectfully moves for the Court hold this case in
abeyance pending the resolution of another case currently before it, *Ariana Cortes, et al.*
v. NLRB, Case No. 24-5152. Appellee/Cross-Appellant VHS Acquisition Subsidiary
Number 7, Inc. d/b/a Saint Vincent Hospital (Saint Vincent) opposes this motion.

In support of its motion, the NLRB shows the following:

1. This case is before the Court on appeal by the NLRB, of Judge Trevor N. McFadden’s Order [1:24-CV-02577, ECF 35] and Memorandum Opinion [1:24-CV-02577, ECF 34] in *VHS Acquisition Subsidiary No. 7 v. NLRB*, No. 1:24-CV-02577 (TNM), 2024 WL 5056358 (D.D.C. Dec. 10, 2024), and on cross-appeal by Saint Vincent from the same Order and Memorandum Opinion.

2. In the case on appeal, the district court granted in part the Motion for Summary Judgment filed by Saint Vincent, and denied the NLRB’s Cross-Motion for Summary Judgment and Motion to Dismiss. [1:24-CV-02577-TNM, ECF 35.] The district court also ordered and declared certain language in 5 U.S.C. § 7521(a) restricting the removal of administrative law judges, as applied to NLRB ALJs, to be unconstitutional.

3. The district court also found, relying primarily on *Cochran v. SEC*, 20 F.4th 194 (5th Cir. 2021) (en banc), *aff’d sub nom. Axon Enter. Inc. v. FTC*, 598 U.S. 175 (2023), that “the Court need not find that the removal restrictions actually inflicted harm to grant [declaratory] relief.” [1:24-CV-02577, ECF 34, p. 19.]

4. In *Cortes*, the ruling under review is the April 10, 2024 Order and accompanying Memorandum Opinion of Chief Judge James E. Boasberg granting the NLRB’s Motion to Dismiss, and dismissing the case without prejudice in *Cortes v. NLRB*, No. 23-2954 (JEB), 2024 WL 1555877 (D.D.C. Apr. 10, 2024).

5. Like this case, *Cortes* has put before this Court the question whether “*Collins v. Yellen*, 594 U.S. 220 (2021) preclude[s] declaratory relief unless an unlawful

removal restriction altered the NLRB's or President's behavior?" [24-5152, Doc. # 2079115, p. 2; *see also* Doc. # 2093200, p. 32.]

6. Because *Cortes* will be fully briefed by March 11, 2025, and both cases raise a substantially overlapping threshold issue, the Board requests that this case be held in abeyance, for the purpose of judicial efficiency, until this Court renders a decision in *Cortes*. This Court's disposition of *Cortes* may completely resolve the issue presented in the NLRB's appeal of this matter, and even if it does not, it will likely provide substantial guidance that would aid the parties in usefully briefing any remaining issues.

WHEREFORE, the Board respectfully requests that the Court grant this motion and hold briefing in abeyance pending its resolution of *Cortes*.

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD

Contempt, Compliance, and
Special Litigation Branch

/s/ Paul A. Thomas

Paul A. Thomas

Supervisory Attorney

Tel: (202) 273-3788

paul.thomas@nlrb.gov

CA Bar No. 2800445

Craig R. Ewasiuk
Attorney
Tel: (202) 840-7258
craig.ewasiuk@nrlrb.gov
D.C. Bar No. 1044296

Kevin P. Flanagan
Deputy Assistant General Counsel
1015 Half Street SE, 4th Floor
Washington, DC 20003
Tel: (202) 273-2938
kevin.flanagan@nrlrb.gov
(No official bar number in Maryland)

Dated at Washington, D.C.
this 21st day of February 2024

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), counsel hereby certifies that the foregoing Motion to Hold Case in Abeyance contains 448 words, as counted by counsel's word processing system, and thus complies with the 5,200-word limit. *See* Fed. R. App. P. 27(d)(2)(A).

Further, this document complies with the typeface and type-style requirements of the Federal Rules of Appellate Procedure, 32(a)(5) and (a)(6), because this document has been prepared in a proportionally spaced typeface using Microsoft Word using size 14-point Garamond font.

/s/ Kevin P. Flanagan
Kevin P. Flanagan
Deputy Assistant General Counsel
1015 Half Street SE, 4th Floor
Washington, DC 20003
Tel: (202) 273-2938
kevin.flanagan@nlrb.gov
(No official bar number in Maryland)

CERTIFICATE OF SERVICE

I certify that on February 21, 2025, I electronically filed the foregoing document using the CM/ECF filing system for the United States Court of Appeals for the District of Columbia Circuit, thereby causing a copy to be served on the ECF Filers electronically by the Notice of Docket activity.

/s/ Kevin P. Flanagan

Kevin P. Flanagan

Deputy Assistant General Counsel

1015 Half Street SE, 4th Floor

Washington, DC 20003

Tel: (202) 273-2938

kevin.flanagan@nlrb.gov

(No official bar number in Maryland)